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JAMES H. McKENNEY,
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Brief of Collins for D. C. Cal.
for appt.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1901.

Filed November 4, 1901.

JOHN A. SEXTON,
Plaintiff in Error

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Defendant in Error

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Reply Brief of Plaintiff in Error

IN SUPPORT OF MOTION OR APPEAL.

GEORGE D. COLLINS,
Counsel for Plaintiff in Error

Filed _____, A. D. 1901.

JAMES H. McKENNEY, Clerk.

By _____
Deputy Clerk.

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IN THE

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JOHN E. SEXTON,
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vs.
THE PEOPLE OF THE STATE OF CALIFORNIA,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF CALIFORNIA.

Reply of Plaintiff in Error in re Motion to Dismiss or Affirm.

STATEMENT.

The plaintiff in error was convicted in the Superior Court of El Dorado County, State of California, of having extorted thirty dollars from one Greenwald by means of a threat to accuse said Greenwald of the crime of violating the laws of the United States in selling and delivering cigars "in a form other than in a new box not before used "for the purpose of packing cigars therein" (Record, p. 2); and that is an offense against the internal revenue (Sec. 3392, Rev. Stat. U. S.). In the Superior Court a motion was made by this plaintiff in error to quash the indictment upon the ground that the Court has no jurisdic-

tion of the offense charged; the motion was denied, he excepting (Record, pp. 3, 4). From the judgment of conviction, the defendant prosecuted his appeal to the Supreme Court of the State; he raised the point that the offense charged was exclusively within the jurisdiction of the United States; that by virtue of Sections 711 and 5484 of the Revised Statutes of the United States, exclusive cognizance of the accusation, is vested in the Federal courts. The Supreme Court of the State in affirming the judgment of the trial Court, overruled these points and held that the State courts possessed jurisdiction by virtue of Section 518 of the Penal Code of the State, which reads as follows, viz:

> "Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right."

And in a somewhat defiant assertion, said:

> "It would be extortion as defined by the Penal Code of this State, and this Court would not be concerned as to whether or not defendant's crime was also punishable under Federal laws."

The questions presented on the writ of error, are exclusively Federal questions. In the first place, we contend that the matters set forth in the indictment are within the provisions of Section 5484 of the Revised Statutes of the United States,—when read in connection with Section 3392; that by virtue of Section 711 of the Revised Statutes, the Federal courts have exclusive jurisdiction. In the next place, we contend that the decision of the Supreme Court of the State, in effect holding that the State statute confers the jurisdiction on the State courts necessarily makes the statute *to that extent*, in conflict with Section 1 of Article 3 of the Constitution of the United States, and with Sections 711 and 5484 of the Revised Statutes. And we further contend that the State statute and the decision of the State Court operate to deprive the plaintiff in error of his liberty without due process of law; and for that reason are repugnant to the Fourteenth Amendment. The Federal questions presented arise upon the judgment roll and are certified to by the Supreme Court of the State, through the Chief Justice (Record, pp. 11, 13).

ERRORS ASSIGNED.

The following constitute the errors relied upon in support of the prayer for reversal of the judgment, viz:

I.

That the Supreme Court of the State of California, committed manifest error in deciding that Section 518 of the Penal Code of the State of California, is not in conflict with and not repugnant to the provisions of Section 1 of Article 3 and Section 1 of the Fourteenth Amendment of the Constitution of the United States, and Sections 711 and 5484 of the Revised Statutes of the United States.

II.

That by the judgment of the Superior Court in and for the County of El Dorado, and by the judgment of the Supreme Court of the State of California, affirming said judgment of the Superior Court, the plaintiff in error is deprived of his liberty without due process of law, and is denied the equal protection of the law; all of which is in violation of the provisions of Section 1 of the Fourteenth Amendment.

ARGUMENT.

At the outset, it should be distinctly understood that our position is not at all in conflict with the well established principle of constitutional law that in the United States there is a dual sovereignty; and that the same conditions characterizing the conduct of the individual may well fix upon him the responsibility of having committed one crime against the Nation and another and separate and distinct crime against the State; thus making him amenable to each sovereignty. But there is necessarily a class of crimes that are distinctly offenses against one sovereignty and not against the other; and wherever a crime of that class appertains to the sovereignty of the United States, there the sole jurisdiction resides, and it is in the nature of things, essentially exclusive. Such must needs be the case in all instances where the crime charged is a violation of the *revenue laws* of the

United States. All matters relating to the revenue of the Nation, are of necessity within the exclusive cognizance of the general Government. Every crime, therefore, that in its nature is dependent for its existence on a revenue law of the United States, is solely an offense against the national sovereignty; nor can there be any inquiry as to whether a concurrent or subsidiary or auxiliary authority is retained by the States; for in the first place, the States never had the power to enact revenue laws extending beyond their territorial limits; and in the next place the power of the national Government to enact laws pertaining to the national revenue and to entertain prosecutions for violations of those laws, is necessarily exclusive of a concurrent or any power in the States. In the third place Congress has made the jurisdiction of the Federal courts, absolutely exclusive.

Rev. Stat., Sec. 711.

The jurisdiction of the Federal courts is just as exclusive of the State courts, in respect to crimes that depend for their existence upon the revenue laws of the United States, as is the jurisdiction of those courts in matter pertaining to the proceedings therein. It has been held that the jurisdiction over perjury committed before a notary public of the State upon a contested election of a member of the national House of Representatives, is exclusively an offense against the sovereignty of the United States.

In Re Loney, 134 U. S., 372.

In the same sense and to the same extent a crime against the revenue laws of the United States, is exclusively an offense against the sovereignty of the Nation. The revenue laws of the general Government result peculiarly from the inherent sovereignty of the Government; and the power to enact such laws and with equal scope of operation, was never possessed by any one of the several States; it is impossible, therefore to invoke the theory or doctrine of concurrent jurisdiction. The *same precise offense* of which the plaintiff in error has been convicted in the State Court, is defined by Section 5484 of the Revised Statutes of the United States, as read in its relation to Section 3392; there is no such a distinction possible as that existing between counterfeiting as an offense against the Nation and counterfeiting in its character of a

cheat, as an offense against the State. The crime of which plaintiff in error has been convicted in the State Court, is solely and exclusively a violation of the revenue laws of the United States; and cannot in the nature of things, be an offense against the sovereignty of the State. Besides there is no excuse for the intervention of the State; the law enacted by Congress (Section 5484 of the Revised Statutes), fully and completely covers the case in all its aspects. Surely it is competent for Congress to protect the individual against attempted extortion and against extortion committed by means of a threat to enforce or have enforced the revenue laws of the United States; and there is no occasion for the State to cover the same ground; there is no room for any metaphysical or other distinction, to justify State legislation, or sustain a theory of an offense against or injury to State sovereignty. But conceding that it is properly within the province of the State to protect all persons within its borders from extortion and kindred offenses; yet where Congress, acting within the scope of the authority conferred by the Constitution, has legislated upon the subject, it follows that to the extent of such legislation the power and jurisdiction of the State, if any there be, has been superseded; at least until the law of the United States has been repealed. The views expressed by Mr. Justice Story in *Houston* vs. *Moore* (5 Wheat., 65, 68, 69, 72, 73, 74, 75), fully sustain our position and require a reversal of the judgment of the Supreme Court of California. That his views correctly state the law, seems to be conceded in *Claflin* vs. *Houseman*, 93 U. S., 141, 142.

The question we present, has come before State courts of very distinguished authority and they have held that the Federal courts possess exclusive jurisdiction over the crime and that the State law is inoperative.

Com. vs. Fuller, 8 Met., 313.
Com. vs. Tenney, 97 Mass., 50.
Com. vs. Felton, 101 Mass., 204.
Com. vs. Ketner, 92 Pa. St., 372.
State vs. Tuller, 34 Conn., 280.
Com. vs. Feely, 1 Va. Cas., 321.
People vs. Fonda, 62 Mich., 407.

We have already sufficiently pointed out that the courts of the several States never had jurisdiction over the offense defined by Section

5484 of the Revised Statutes; therefore, the theory or principle of concurrent jurisdiction is inapplicable. The very explicit and positive language of Section 711 of the Revised Statutes, is conclusive against the jurisdiction of the State courts; and it is in no respect modified by Section 5328 of the Revised Statutes, in a case like this, where the State courts never had the jurisdiction; besides, Section 5328 refers only to such laws of the State, as were in existence at the time of its adoption; and does not extend to State laws subsequently passed. The law of California relative to extortion was adopted long afterwards; the case therefore is clearly within Section 711 and not Section 5328 of the Revised Statutes. It is too clear for argument that Section 5328 of the Revised Statutes has no application whatever to crimes that are exclusively offenses against the sovereignty of the United States; for instance, such as treason or as in our case, an offense against the revenue laws of the Nation.

That Section 5484 of the Revised Statutes operates to exclude State jurisdiction, see—

Prigg vs. Commonwealth, 16 Pet., 617, 618, 622.

The internal revenue law claimed to have been violated by the person against whom the extortion is alleged to have been committed is—

Section 3392, Rev. Stat. U. S.

And that provision read in connection with Section 5484 of the Revised Statutes, shows the alleged crime to be exclusively an offense against the sovereignty of the United States, and beyond the jurisdiction of the State.

For the reasons we have stated, there is nothing in the authorities cited by defendant in error that in any degree militates against our position. Take, for instance, *Cross* vs. *North Carolina* (132 U. S., 131); the Court there points out that the offense under the State law, was essentially a different offense from that defined by the Federal law; in our case the offenses are precisely the same in definition and effect. So in *Fox* vs. *Ohio*, 5 How., 410, holding that the crime of counterfeiting was an entirely different crime under the Federal law and the State law; and having differentiating characteristics; thus

making it possible for the State to take cognizance of the offense against its own sovereignty, as for a cheat; a theory inapplicable to the United States (United States vs. Cruikshank, 92 U. S., 550). But no distinction is possible between the extortion of which plaintiff in error has been convicted under the State law, and the extortion defined by Section 5484 of the Revised Statutes of the United States; they are one and the same; and the sovereignty violated, is exclusively that of the United States; which would be true in all cases where the law of the Nation and the law of the State, cover precisely the same ground, and aim at the same evil and at the same aspect of the evil. This principle is the logical result of Article 6, Section 1, of the Constitution of the United States:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

And it certainly would seem to be the law, that as the United States has exclusive jurisdiction to enforce its revenue laws and punish their violation, no legislation of the State, relating to the same subject, can be of any validity.

We desire to say in conclusion, that on a motion to dismiss or affirm, it is proper to *reverse* the judgment of the State Court, if the case on its merits calls for reversal. That was the course pursued in—

Southern Pacific Co. vs. Denton, 146 U. S., 202.

We accordingly respectfully submit that the motions to dismiss or affirm should be denied; and that the judgment of the Supreme Court of California, should be *reversed*.

GEORGE D. COLLINS,
Counsel for Plaintiff in Error.